THE HIGH COURT OF SIKKIM : GANGTOK

(Civil Extraordinary Jurisdiction)

Dated : 10th July, 2023

SINGLE BENCH : THE HON'BLE MRS. JUSTICE MEENAKSHI MADAN RAI, JUDGE

WP(C) No.32 of 2018

Petitioner : Karma Tshering Bhutia

versus

Respondents : State of Sikkim and Others

Application under Articles 226/227
of the Constitution of India

Appearance

Mr. A. K. Upadhyaya, Senior Advocate with Ms. Rachhitta Rai, Advocate for the Petitioner.

Mr. Zangpo Sherpa, Additional Advocate General with Mr. Sujan Sunwar, Assistant Government Advocate for the Respondents No.1 to 3.

Ms. Pubalee Bujarbaruah, Senior Advocate with Mr. Ganesh Man Chettri, Advocate for the Respondent No.4.

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and

WP(C) No.43 of 2022

Petitioner : College of Agriculture Engineering and Post Harvest Technology

versus

Respondents : State of Sikkim and Others

Application under Articles 226/227
of the Constitution of India

Appearance

Ms. Pubalee Bujarbaruah, Senior Advocate with Mr. Ganesh Man Chettri, Advocates for the Petitioner.

Mr. Zangpo Sherpa, Additional Advocate General with Mr. Sujan Sunwar, Assistant Government Advocate for the Respondents No.1 to 3.

Mr. A. K. Upadhyaya, Senior Advocate with Ms. Rachhitta Rai, Advocate for the Respondent No.4.

J U D G M E N T

Meenakshi Madan Rai, J.

1. Both Writ Petitions involve the same facts and legal questions concerning the interpretation of the provisions of the Land Acquisition Act, 1894 (the "Act of 1894") and the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (the "Act of 2013"), relevant for the present purposes, hence they have been heard together and are being disposed of by this common Judgment.

2. In WP(C) No.32 of 2018, the process of acquiring the Petitioner's land, situated at Marchak Block, Ranipool, East Sikkim, for the purpose of constructing a Central Agricultural University (CAU) commenced in the year 2013. Notification under Section 4(1) of the Act of 1894, was published in the Government Gazette, dated 18-05-2013, invoking Section 17(4) of the same Act to specify that Section 5A of the Act would be inapplicable. On 20-02-2013, the Respondent No.2, assessed the compensation for the land and properties standing thereon for a total sum of ₹ 6,70,09,931/- (Rupees six crores, seventy lakhs, nine thousand, nine hundred and thirty one) only, which was communicated to the Respondent No.4 by Respondent No.3, vide communication dated 31-05-2013, requesting Respondent No.4 to release 80% advance payment i.e., ₹ 5,16,13,394/- (Rupees five crores, sixteen lakhs, thirteen thousand, three hundred and ninety four) only, to the Respondent No.3, for payment to the Petitioner. Notice under Section 6 of the Act of 1894 was issued on 03-08-2013 and under Section 9(1) on 25-11-2013. The amount of ₹ 5,16,13,394/- (Rupees five crores, sixteen lakhs, thirteen thousand, three

hundred and ninety four) only, was admittedly paid to the Petitioner vide cheque bearing No.065584, dated 05-05-2014. Another cheque bearing No.736862, dated 30-05-2015, was paid as house compensation of ₹ 82,42,930/- (Rupees eighty two lakhs, forty two thousand, nine hundred and thirty) only, for the building standing on the land. It is the Petitioner's case that, no Award under Section 11 of the Act of 1894 had been passed nor was ownership of the property transferred to Respondent No.4. In the mean time, the Act of 2013 came to be enforced w.e.f 01-01-2014 as a result of which proceedings under the Act of 1894 lapsed. On 09-08-2017, the Petitioner filed an application before the Respondent No.2 requesting for release of the remaining 20% of compensation as per the Act of 2013, in vain. This was reiterated on 21-11-2017, specifying the remaining amount as ₹ 17,80,29,535/- (Rupees seventeen crores, eighty lakhs, twenty nine thousand, five hundred and thirty five) only, as per rectified Award of 12-08-2017, upon which Respondent No.4 failed to act. That, Respondent No.3, vide letter, dated 29-11-2017, made the same request, to which Respondent No.4 failed to respond, hence, the prayers in the Writ Petition;

> "i) To direct the Respondent no.4 to release the compensation amount as per new act "LARR Act, 2013" to the Petitioner.
>
> ii) To direct the Respondent no.4 to make payment of interest @ 10% per annum on balance compensation amount unpaid until final payment of entire sum of money.
>
> iii) To direct the respondents for rehabilitation and resettlement of the Petitioner and his family member for displacement from their property under Chapter V particularly under section 31(2) (a), (c), (d), (e), (f) of the new act "LARR Act, 2013"
>
> iv) Cost of the proceedings or

v) Any other order/orders which may deem fit and proper in the interest of justice."

(i) The State-Respondent No.3 *inter alia* averred that, on 11-06-2015, Respondent No.3 informed Respondent No.4 that all matters relating to land acquisition were kept on hold in view of the enforcement of the Act of 2013 as the State rules under the said Act were being finalised. That, as the Award in the present case was not passed before the commencement of the Act of 2013, the compensation was rectified in terms of the new Act, on 12-08-2017 to ₹ 17,80,29,535/- (Rupees seventeen crores, eighty lakhs, twenty nine thousand, five hundred and thirty five) only, on finalization of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement, Sikkim (Rules), 2015 (hereinafter, the "Sikkim Rules of 2015"), and its notification on 13-10-2015. Vide communication, dated 13-04-2017, the Respondent No.4 sought transfer of ownership of the acquired land, to which Respondent No.3, on 11-05-2017, informed *inter alia* that as the Award had not been passed under the Act of 1894, it had been rectified. On 26-08-2017, the Respondent No.4 requested the Respondent No.3 to decide the matter in terms of Section 24(1)(b) of the Act of 2013 and on 14-12-2017, raised an objection to the rectified compensation. Admittedly, 80% of the compensation amount of ₹5,16,13,394/- (Rupees five crores, sixteen lakhs, thirteen thousand, three hundred and ninety four) only, computed by Respondent No.3, under the Act of 1894, was released to the Petitioner along with compensation for the building standing on the land. That, the 20% remaining compensation i.e., ₹ 1,54,86,137/- (Rupees one crore, fifty four lakhs, eighty six thousand, one hundred and thirty seven) only, was forwarded to

Respondent No.3 by the Respondent No.4 vide letter, dated 14-08-2015 but could not be processed for payment due to the enforcement of the Act of 2013.

(ii) The Respondent No.4 countered that the Writ Petition suffers from a non-joinder of necessary parties due to non-impleadment of the Agriculture Department, Union of India. That, consequent upon the entire payment, compensation calculated under the Act of 1894 along with compensation for two storeyed building was made over to the Petitioner, the Petitioner handed over the landed property and the building to the Respondent No.4 on 11-07-2015, in the presence of the officials of the Respondent No.2 and construction of new buildings have taken place thereon. That, in the said circumstances the Act of 2013, is not applicable. Moreover, the Petitioner sought for 20% land compensation as per the revised rate after a lapse of two years. Hence, the Writ Petition be dismissed.

3. In WP(C) No.43 of 2022, the Petitioner's case (Respondent No.4 in WP(C) No.32 of 2018) is that the Respondent No.4 (Petitioner in WP(C) No.32 of 2018) 'offered' to sell his land, adjacent to the land allotted to the Petitioner by the State Government, @ ₹ 200 per square feet to enable expansion of the Petitioner's college. The Petitioner on 12-09-2012 accordingly, sought necessary clarifications/guidelines and purchase procedure of land from Respondent No.2, who instead initiated the process for acquisition of the land and forwarded the statement of compensation of land and other properties to the Respondent No.3 assessing the compensation at ₹ 6,70,09,931/- (Rupees six crores, seventy lakhs, nine thousand, nine hundred and thirty one) only.

The Petitioner is aggrieved by the rectified statement of compensation, dated 12-08-2017, purported to have been made under the Act of 2013 and communicated to them by the Respondent No.3, amounting to ₹ 25,33,71,996/- (Rupees twenty five crores, thirty three lakhs, seventy one thousand, nine hundred and ninety six) only, which after adjustment of earlier payment would be ₹ 17,80,29,535/- (Rupees seventeen crores, eighty lakhs, twenty nine thousand, five hundred and thirty five) only. Hence, the prayers in WP(C) No.43 of 2022 *viz*;

> **"**Issue a rule calling upon the respondents to show cause as to why an appropriate writ, order or direction may not be issued for setting aside and quashing the
>
> (i) Memo No.1748/LR&DMD/GOS/ACQ/317-318 dated 12.08.2017 (Annexure P— 15)
>
> (ii) and letter issued vide Memo No.1748/LR&DMD/ACQ/GOS/418 dated 20.09.2017 (Annexure P— 17)
>
> (iii) and Letter issued vide Memo No.1748/LR&DMD/2018/631 dated "NIL" 2018 (Annexure P— 18).**"**

4. Hereinafter for convenience the parties shall be referred to in terms of their litigative status in WP(C) No.32 of 2018.

5. While inviting the attention of this Court to Section 24(1)(a) of the Act of 2013, Learned Senior Counsel for the Petitioner contended that where no Award under Section 11 of the Act of 1894 has been passed, as in the instant case then, all provisions of the Act of 2013 shall apply for determination of compensation. Drawing succour from the ratio in ***Indore Development Authority*** vs. ***Manoharlal and Others***[1], it was contended that, only when an Award under Section 11 of the Act of 1894 has

[1] (2020) 8 SCC 129

been made then such proceedings shall continue under the Act of 1894. That, the Respondent No.3 vide Memos, dated 11-06-2015 and 02-09-2015, informed Respondent No.4 that all matters relating to land acquisition were kept on hold and the compensation was rectified on 12-08-2017, in terms of the Act of 2013, as no Award was made earlier by the Respondent No.2. That, although Sikkim Rules of 2015 came to be enforced only from 13-10-2015, the Rules do not regulate the Act as it is a Central Act. That, the compensation issued on 12-08-2017, vide rectified statement be ordered to be paid to the Petitioner in terms of the prayers in the Writ Petition. That, as Section 31 of the Act of 2013 provides for rehabilitation and resettlement award for affected families by the Collector, the Respondent No.4 also be directed to pay towards the rehabilitation and resettlement of the Petitioner and his family.

6. Learned Additional Advocate General for the State-Respondents No.1 to 3, endorsing the submissions made on behalf of the Petitioner agreed that no Award under Section 11 of the Act of 1894 had been prepared by the concerned authorities. That, the document relied on by the Petitioner, dated 12-08-2017, is the rectified statement of compensation amounting to ₹ 25,33,71,996/- (Rupees twenty five crores, thirty three lakhs, seventy one thousand, nine hundred and ninety six) only, of which ₹ 17,80,29,535/- (Rupees seventeen crores, eighty lakhs, twenty nine thousand, five hundred and thirty five) only, is outstanding. That, the communication, dated 31-05-2013, is only a "Statement of Compensation" and does not tantamount to an Award.

7. Learned Senior Counsel for the Respondent No.4 vehemently repudiating the stand taken by the Petitioner and State-Respondents led this Court through the dates of the events and urged that the compensation computed as ₹ 6,70,99,531/- (Rupees six crores, seventy lakhs, ninety nine thousand, five hundred and thirty one) only, on 31-05-2013, was an Award under Section 11 of the Act of 1894 which was communicated to the Respondent No.4. That, the Award is described as "Statement of Compensation" and failure to mention Section 11 of the Act of 1894, does not divest the compensation of the characteristics of an Award, which it bears as required under the Act. The State-Respondents by failing to insert Section 11 of the Act in the Award, cannot interpret the document to the disadvantage of Respondent No.4 after receiving the entire payment. That, the State-Respondents despite release of the 20% remaining payment by Respondent No.4 on 14-08-2015, failed to release it to the Petitioner. That, Section 16 of the Act of 1894, presupposes that an Award has been made under Section 11, whereupon the possession is handed over to the concerned party. Accordingly, on deposit of the entire amount of the Award, the property was handed over, and taken over on 11-07-2015, during which neither the Petitioner nor the State-Respondents objected by raising grounds of non-preparation of the Award. That, the request of the Respondent No.4 made on 14-08-2015 to the Respondent No.3 for mutation of the property has not been complied with. That, the fresh claim of the Petitioner under the Act of 2013 is for the purpose of obtaining undue benefits, as in his first representation, dated 09-08-2017, to the Respondent No.2, he had merely

requested that the new rates be applied for the remaining 20% compensation. That, in the subsequent representation, dated 21-11-2017, the Petitioner laid claim to an amount of ₹ 17,80,29,535/- (Rupees seventeen crores, eighty lakhs, twenty nine thousand, five hundred and thirty five) only, based on the alleged rectified assessment under the Act of 2013 which itself is not in conformity with law, as the market rate for computing the compensation has not been disclosed. That, the proviso to Section 26 of the Act of 2013 requires the date of determination of market value to be the date on which the notification under Section 4(1) of the Act of 1894 was issued. Besides, the State-Respondents have made contradictory statements regarding the rates of rectified calculation. As per their Counter-Affidavit, the revised statement was prepared at the revised market rate of ₹ 319.94 per square feet, (Memo, dated 12-08-2017), while, in their subsequent Affidavit of 12-06-2023, (Annexure — A3), the assessment was allegedly made @ ₹ 352.18 per square feet.

(i) Advancing an alternative argument, it was contended that, even assuming but not admitting that Section 24(1)(a) of the Act of 2013 is applicable to the case, the first Notification under Section 4(1) of the Act of 1894 is the base for determining the market rate, consequently, the State-Respondents erred in assessing the rectified statement as per the revised rates. That, as the Award dated 31-05-2013 was passed and acted upon by all the parties, the instant case will be covered by the ambit of Section 24(1)(b) and not Section 24(1)(a) of the Act of 2013. That, Section 25 of the Act of 2013 requires the Collector to make an award within a period of 12 months from the date of publication of

the declaration under Section 19 of the Act of 2013 and if not done, the entire proceedings for land acquisition shall lapse. That, Section 19 of the Act of 2013, corresponds to Section 6 of the Act of 1894 regarding declaration. As Section 6 declaration under the Act of 1894 was published on 03-08-2013, the time limit of 12 months would commence on 01-01-2014, the date of enforcement of the Act of 2013. The rectified Award was made on 12-08-2017, much beyond the period of limitation, which tantamounts to lapse of the acquisition proceedings. To buttress her submissions, Learned Senior Counsel relied on ***Executive Engineer, Gosikhurd Project Ambadi, Bhandara, Maharashtra Vidarbha Irrigation Development Corporation*** vs. ***Mahesh and Others***[2]***.*** That, in view of the grounds advanced, WP(C) No.32 of 2018 be dismissed and WP(C) No.43 of 2022 be allowed.

8. Heard rival contentions of Learned Counsel for the parties, perused the pleadings, documents and citations made at the Bar, the short question that falls for determination is;

> *"Whether Section 24(1)(a) as urged by the Petitioner and the State-Respondents or Section 24(1)(b) of the Act of 2013 as contended by the Respondent No.4, is applicable to the matters at hand."*

9. Before embarking on this exercise, it is imperative to refer to the law laid down by the Hon'ble Supreme Court in the ***Indore Development Authority*** (*supra*). The issues for determination referred to a Five Judge Bench of the Supreme Court, were as follows;

> **"5.**.....
>
> **5.1.** (i) Whether the word "or" in Section 24(2) of the 2013 Act used in between

[2] (2022) 2 SCC 772

possession has not been taken or compensation has not been paid to be read as "and"?

5.2. (ii) Whether the proviso to Section 24(2) of the 2013 Act has to be construed as part thereof or the proviso to Section 24(1)(b)?

5.3. (iii) What meaning is to be given to the word "paid" used in Section 24(2) and "deposited" used in the proviso to Section 24(2)?

5.4. (iv) What are the consequences of payment not made?

5.5. (v) What are the consequences of the amount not deposited?

5.6. (vi) What is the effect of a person refusing to accept the compensation?**"**

(i) The answers to the questions extracted above were summarised at Paragraph 366 as follows;

"366. In view of the aforesaid discussion, we answer the questions as under:

366.1. Under the provisions of Section 24(1)(a) in case the award is not made as on 1-1-2014, the date of commencement of the 2013 Act, there is no lapse of proceedings. Compensation has to be determined under the provisions of the 2013 Act.

366.2. In case the award has been passed within the window period of five years excluding the period covered by an interim order of the court, then proceedings shall continue as provided under Section 24(1)(b) of the 2013 Act under the 1894 Act as if it has not been repealed.

366.3. The word "or" used in Section 24(2) between possession and compensation has to be read as "nor" or as "and". The deemed lapse of land acquisition proceedings under Section 24(2) of the 2013 Act takes place where due to inaction of authorities for five years or more prior to commencement of the said Act, the possession of land has not been taken nor compensation has been paid. **In other words, in case possession has been taken, compensation has not been paid then there is no lapse. Similarly, if compensation has been paid, possession has not been taken then there is no lapse.**

366.4. The expression "paid" in the main **part of Section 24(2) of the 2013 Act does not include a deposit of compensation in court.** The consequence of non-deposit is provided in the proviso to Section 24(2) in case it has not been deposited with respect to majority of

landholdings then all beneficiaries (landowners) as on the date of notification for land acquisition under Section 4 of the 1894 Act shall be entitled to compensation in accordance with the provisions of the 2013 Act. In case the obligation under Section 31 of the Land Acquisition Act, 1894 has not been fulfilled, interest under Section 34 of the said Act can be granted. **Non-deposit of compensation (in court) does not result in the lapse of land acquisition proceedings. In case of non-deposit with respect to the majority of holdings for five years or more, compensation under the 2013 Act has to be paid to the "landowners" as on the date of notification for land acquisition under Section 4 of the 1894 Act**.

366.5. In case a person has been tendered the compensation as provided under Section 31(1) of the 1894 Act, it is not open to him to claim that acquisition has lapsed under Section 24(2) due to non-payment or non-deposit of compensation in court. The obligation to pay is complete by tendering the amount under Section 31(1). The landowners who had refused to accept compensation or who sought reference for higher compensation, cannot claim that the acquisition proceedings had lapsed under Section 24(2) of the 2013 Act.

366.6. The proviso to Section 24(2) of the 2013 Act is to be treated as part of Section 24(2), not part of Section 24(1)(b).

366.7. The mode of taking possession under the 1894 Act and as contemplated under Section 24(2) is by drawing of inquest report/memorandum. Once award has been passed on taking possession under Section 16 of the 1894 Act, the land vests in State there is no divesting provided under Section 24(2) of the 2013 Act, as once possession has been taken there is no lapse under Section 24(2).

366.8. The provisions of Section 24(2) providing for a deemed lapse of proceedings are applicable in case authorities have failed due to their inaction to take possession and pay compensation for five years or more before the 2013 Act came into force, in a proceeding for land acquisition pending with the authority concerned as on 1-1-2014. The period of subsistence of interim orders passed by court has to be excluded in the computation of five years.

366.9. Section 24(2) of the 2013 Act does not give rise to new cause of action to question the legality of concluded proceedings of land acquisition. Section 24 applies to a proceeding pending on the date of enforcement of the 2013 Act i.e. 1-1-2014. It does not revive stale and time-barred claims and does not reopen concluded proceedings

> **nor allow landowners to question the legality of mode of taking possession to reopen proceedings or mode of deposit of compensation in the treasury instead of court to invalidate acquisition.”** **(emphasis supplied)**

(ii) On the bedrock of the law laid down (*supra*) the question formulated for determination is taken up for consideration.

10. The Notification under Section 4(1) of the Act of 1894 published in the Official Gazette by the Respondent No.3 on 18-05-2013 mentioned that as there was urgency to acquire the land in terms of Section 17(4) of the Act of 1894, Section 5A of the same Act would not apply. For ease of comprehension Section 5A(1) and Sections 17(1) and 17(4) of the Act of 1894 are extracted below;

> **“5A. Hearing of objections.**—(1) Any person interested in any land which has been notified under section 4, sub-section (1), as being needed or likely to be needed for a public purpose or for a company may, within thirty days from the date of the publication of the notification, object to the acquisition of the land or of any land in the locality, as the case may be.**”**
>
> .....
>
> **17. Special powers in case of urgency.**—(1) In cases of urgency, whenever the appropriate Government, so directs, the Collector, though no such award has been made, may, on the expiration of fifteen days from the publication of the notice mentioned in section 9, sub-section (1), take possession of any land needed for a public purpose. Such land shall thereupon vest absolutely in the Government, free from all encumbrances.”
>
> (2).....
>
> (3).....
>
> (4) In the case of any land to which, in the opinion of the appropriate Government, the provisions of sub-section (1) or sub-section (2) are applicable, the appropriate Government may direct that the provisions of section 5A shall not apply, and, if it does so direct, a declaration may be made under section 6 in respect of the land at any time after the date of the publication of the notification under section 4, sub-section (1).**”**

(i) Following the Notice under Section 4(1) on 18-05-2013, declaration under Section 6 of the Act of 1894 was published on

03-08-2013, informing that the land was required for public purpose. Section 9(1) Notice under the Act of 1894 was published on 25-11-2013. Prior to the said Notices, "Statement of Compensation" was computed on 31-05-2013, as ₹ 6,70,99,531/- (Rupees six crores, seventy lakhs, ninety nine thousand, five hundred and thirty one) only, by the Respondent No.3 as per the Act of 1894 and intimated to the Respondent No.4. In fact, records reveal that before the Notification under Section 4(1) was issued the Respondent No.2, vide letter, dated 20-02-2013, informed the Respondent No.3 that the "Statement of Compensation" of land had been worked out at the market rate of ₹ 151.49 per square feet, with a request to release the compensation assessed.

(ii) 80% of the compensation computed was deposited by Respondent No.4, on 01-05-2014 with a request to Respondent No.3 to direct the Petitioner to hand over the possession of the acquired property and building structures, within two months from the date of deposit. On 24-03-2015, the Respondent No.4 reiterated to the Respondent No.3, the request for mutation of the land to enable deposit of the balance amount of 20%. On 14-08-2015, the Respondent No.4 communicated to Respondent No.3 that the possession of the land and building had been handed over to them, by the State Government officials and the owner of the land on 11-07-2015, but when mutation was sought Respondent No.3 sought deposit of the 20% in the Revenue Department for demarcation of the land and change of title. In compliance thereof, remaining 20% compensation was forwarded to the Respondent No.3 on 14-08-2015, vide a revalidated Bank Draft bearing

No.719159, dated 17-03-2015. On 09-12-2016 vide another communication to the Respondent No.3, the Respondent No.4 again sought transfer of ownership of land.

(iii) In the circumstances indicated above, it is apposite to refer to Section 24(1)(a) and (b) of the Act of 2013 which are extracted hereinbelow for reference;

> **"24. Land acquisition process under Act No. 1 of 1894 shall be deemed to have lapsed in certain cases.**—(1) Notwithstanding anything contained in this Act, in any case of land acquisition proceedings initiated under the Land Acquisition Act, 1894 (1 of 1894),—
>
> (a) where no award under section 11 of the said Land Acquisition Act has been made, then, all provisions of this Act relating to the determination of compensation shall apply; or
>
> (b) where an award under said section 11 has been made, then such proceedings shall continue under the provisions of the said Land Acquisition Act, as if the said Act has not been repealed.**"**

(iv) ***Indore Development Authority*** (*ibid)* lays down lucidly at Paragraphs 366.1 and 366.2 as to what Section 24(1)(a) and Section 24(1)(b) of the Act of 2013 entails, which having been extracted hereinabove, for brevity is not being reiterated here.

(v) Section 11 of the Act of 1894 *inter alia* provides for enquiry and award by Collector and requires the Collector to make an award under his hand of viz;—(i) the true area of the land; (ii) the compensation which in his opinion should be allowed for the land; and (iii) the apportionment of the said compensation among all the persons known or believed to be interested in the land, of whom, or of whose claims, he has information, whether or not they have respectively appeared before him.

(vi) Section 15 of the Act of 1894 *inter alia* deals with matters to be considered and neglected in determining the amount

of compensation and that the Collector shall be guided by the provisions contained in Sections 23 and 24 of the same Act which is concerned with matters to be considered in determining compensation and matters to be neglected in determining compensation respectively.

(vii) In light of requisites of the aforementioned legal provisions, "Statement of Compensation", dated 31-05-2013 and that of 12-08-2017, are extracted hereinbelow and juxtaposed;

STATEMENT OF COMPENSATION AS PER THE ACT OF 1894, DATED 31-05-2013

"……
Memo No:223/1784/GOS/LR&DMD/ACQ Dated:31/5/2013

To,
The Dean,
College of Agriculture Engineering & Post Harvest Technology,
Central Agriculture University Ranipool,
East Sikkim.

Sub: Statement of Compensation in relation to acquisition of land for the construction of Central agriculture University by College of Agriculture Engineering & Post Harvest Technology Central Agriculture University, Imphal, Government of India, at Marchak block East Sikkim.

Sir,

With reference to the above subject, I am directed to forward herewith the statement of compensation for land & other standing properties along with Govt. Gazette published vide no.**240, dated: 21st May, 2013**. The cost of compensation for land and other properties assessed by DC/East is as under:-

1. Cost of land area measuring 3.0260 hect.	₹ 4,93,43,117/-
2. Cost of standing properties	₹ 2,85,146/-
3. 30% solatium	₹ 1,48,88,479/-
	₹ 6,45,16,742/-
4. 4% Contg. Estb. Charges	₹ 25,80,670/-
5. Capitalized value of LR	₹ 2119/-
Total	**₹ 6,70,99,531/-**

(Rupees Six crore seventy lakh ninety nine thousand five hundred thirty one) only.

I am therefore, directed to request you to kindly release the 80% advance payment of **₹ 5,16,13,394/-** of **₹ 6,45,16,472/-** only, at the disposal of Secretary, Land Revenue & Disaster Management Department for making payment to the land owners.

Yours faithfully,

Sd/-(D.B.Yonzon)
RO-CUM-ASSTT. DIRECTOR,
LAND REVENUE & DM DEPARTMENT.

……."

STATEMENT OF COMPENSATION AS PER THE ACT OF 2013, DATED 12-08-2017

"……
Memo No.1748/LR&DMD/GOS/ACQ/317-318 Dated:12/8/2017

To,
The Dean,
College of Agriculture Engineering & Post Harvest Technology,
(Central Agriculture University)
Ranipool, Gangtok.

Sub: Rectified Statement of Compensation of bill as per RFCTLARR Act, 2013, in connection with the land acquired by College of Agriculture Engineering & Post Harvest Technology Central Agriculture University, Imphal, Government of India at Marchak block East Sikkim.

Sir,

Please refer to your letter no. CAEPHT/Estt-92/Land/12-13/507 dated 28/06/2017 on the subject cited above. In this regard, I am directed to inform you that payment of Rs.1,54,86,137/- has been released to District Collector, East vide cheque no. 357790 dated 29/07/2017. The rectified details of Compensation is reproduced as :

I	1.	Total Land Compensation including 100% solatium	₹ 23,14,31,196/-
	2.	4% Contg./Estb. Charge	₹ 92,57,248/-
	3.	Capitalized value of Land Rent	₹ 2,119/-
	4.	**TOTAL**	₹ 24,06,90,563/-
	5.	Payment released to DC(East) i.e. 80% of total amount as per the L.A. Act, 1894 vide cheque no.065584 dated 05/05/2014	₹ 5,16,13,394/-
	6.	**Net payable**	**₹ 18,90,77,169/-**
II	7.	House compensation including 100% solatium	₹ 1,21,93,686/-
	8.	4% Contg./Estb. Charge	₹ 4,87,747/-
	9.	Total	₹ 1,26,81,433/-
	10.	Payment released to DC/East vide cheque no 736862 dated 30/05/2015	₹ 82,42,930/-
	11.	**Net payable**	**₹ 44,38,503/-**
	12.	**Grand Total (I + II)**	**₹ 19,35,15,672/-**
III	13.	Payment released to DC, East i.e. 80% of total amount as per the L.A. Act, 1894 vide cheque No.357790 dated 29/07/2017	₹ 1,54,86,137/-
	14.	**Net payable amount**	**₹ (19,35,15,672– 1,54,86,137)/-**
			₹ 17,80,29,535/-

I am therefore, directed to request you to release the balance payment amounting to **₹ 17,80,29,535/-(Rupees Seventeen Crore Eighty Lakh Twenty Nine Thousand Five Hundred And Thirty Five) only,** at the disposal of the Secretary, Land Revenue & Disaster Management Department

	for making payment to the land owners, please. Thanking you, Yours faithfully, Sd/- Revenue Officer, **Land Revenue & D.M. Department.** ……."

(viii) On perusal of both statements, there is no apparent difference between the two, save the computed amount and details of house compensation, added in the Award of 12-08-2017. Nevertheless, despite house compensation not finding place in the Award dated 31-05-2013 admittedly compensation of ₹ 82,42,930/- (Rupees eighty two lakhs, forty two thousand, nine hundred and thirty) only, was computed as compensation for the two storeyed building standing on the land and paid in entirety to the Petitioner on 30-05-2015. Needless to add that, the percentage of solatium in the two computations *supra* differ in view of the different provisions under the two Acts, with the Act of 2013 prescribing solatium of 100%. In ***Golden Iron and Steel Forging*** vs. ***Union of India and Others***[3], the High Court of Punjab and Haryana observed that the word "solatium" draws its meaning from the word "solace" that is comfort money, given as a statutorily recognized gesture of conciliation for compulsorily depriving a land owner of his property.

(ix) It is pertinent also to refer to Section 11A of the Act of 1894 which reads as follows;

> "**11A. Period within which an award shall be made.**—(1) The Collector shall make an award under section 11 within a period of two years from the date of the publication of the declaration and **if no award is made within that period, the entire proceeding for the acquisition of the land shall lapse:**
>
> Provided that in a case where the said declaration has been published before the

[3] (2008) SCC OnLine P&H 498

> commencement of the Land Acquisition (Amendment) Act, 1894, the award shall be made within a period of two years from such commencement.
>
> *Explanation*.—In computing the period of two years referred to in this section, the period during which any action or proceeding to be taken in pursuance of the said declaration is stayed by an order of a Court shall be excluded.**"** **(emphasis supplied)**

(x) The various dates have already been extracted *supra.* Suffice it to notice that close on the heels of the Section 4(1) Notification (*supra*), the Award was made on 31-05-2013 thereby revealing non-applicability of Section 11A of the Act of 1894 to the facts of the Petitioner's case, since the proceedings for the acquisition do not lapse in the instant matters. It is also evident from the records that on 31-05-2013 following the preparation of the "Statement of Compensation", it was communicated to Respondent No.4 in due compliance to Section 12(2) of the Act of 1894.

(xi) That, having been said necessary reference is made to Section 114 of the Act of 2013 which reads as follows;

> **"114. Repeal and saving.**—(1) The Land Acquisition Act, 1894 (1 of 1894) is hereby repealed.
>
> (2) Save as otherwise provided in this Act the repeal under sub-section (1) shall not be held to prejudice or affect the general application of section 6 of the General Clauses Act, 1897 (10 of 1897) with regard to the effect of repeals.**"**

(xii) Section 6 of the General Clauses Act, 1897, which finds reference above reads as follows;

> **"6. Effect of repeal.—**Where this Act, or any Central Act or Regulation made after the commencement of this Act, repeals any enactment hitherto made or hereafter to be made, then, unless a different intention appears, **the repeal shall not**—
>
> (a) revive anything not in force or existing at the time at which the repeal takes effect; or

(b) affect the previous operation of any enactment so repealed or anything duly done or suffered thereunder; or

(c) **affect any right, privilege, obligation or liability acquired, accrued or incurred under any enactment so repealed; or**

(d) affect any penalty, forfeiture or punishment incurred in respect of any offence committed against any enactment so repealed; or

(e) affect any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid,

and any such investigation, legal proceeding or remedy may be instituted, continued or enforced, and any such penalty, forfeiture or punishment may be imposed as if the repealing Act or Regulation had not been passed.**"**

(emphasis supplied)

(xiii) The ambit of the repeal and saving clause as given in Section 114 of the Act of 1894 is to be gauged from the foregoing extracted provision of the General Clauses Act, 1897, which is explained in no uncertain terms.

11. The arguments of the Petitioner and Respondents No.2 and 3 that the "Statement of Compensation" is not an Award cannot be countenanced for the reason that it consists of all the requisites of an Award. The Respondent No.2 has considered the legal requirements of Section 11 of the Act of 1894, which includes the true area of the land, the compensation which in his opinion would be allowed for the land. Compensation for the standing building was also calculated. The compensation was calculated at the market rate of ₹ 151.49 per square feet as already discussed. Solatium of 30% was calculated in terms of Section 23(2) of the Act of 1894. In addition to which 4% contingency and establishment charges were added and capitalized value of LR was added. Section 23(1A) of the Act of 1894 refers to the market value of the land on the date of publication of the Notification

under Section 4(1) of the Act of 1894 as a relevant factor for determining the amount of compensation to be awarded for land acquired under the Act. The rate at which compensation was calculated as duly intimated to the Respondent No.4. Section 31 of the Act of 1894 provides for payment of compensation or deposit of the same in the Court. On making an Award under Section 11 of the Act of 1894, the Collector shall tender payment of the compensation awarded by him to the "persons interested entitled thereto according to the award and shall pay it to them unless prevented by some one or more by the contingencies mentioned in the next sub-section".

12. The fact of deposit of 80% on 01-05-2014 by Respondent No.4 and due receipt of the amount by the Petitioner sans demur is not contested. There was no dispute to the title and the fact that the Petitioner was the sole owner of the property. The remaining 20% compensation was admittedly made over to the office of the Respondent No.3, vide letter dated 14-08-2015 of Respondent No.4, consequent upon which vide a document, dated 11-07-2015, which bears the signatures of the Petitioner, the 'Assistant Estate Officer', presumably of the Respondent No.4 and two officials of the Respondent No.2, the property was handed over by the Petitioner and the physical possession thereof was taken over by the Respondent No.4.

13. On this facet it is beneficial to refer to ***Satendra Prasad Jain and Others*** vs. ***State of U.P and Others***[4]***,*** where the Supreme Court, observed as follows;

> **"15. Ordinarily, the Government can take possession of the land proposed to be**

[4] (1993) 4 SCC 369

> **acquired only after an award of compensation in respect thereof has been made under Section 11. Upon the taking of possession the land vests in the Government, that is to say, the owner of the land loses to the Government the title to it. This is what Section 16 states. The provisions of Section 11-A are intended to benefit the landowner and ensure that the award is made within a period of two years from the date of the Section 6 declaration. In the ordinary case, therefore, when the Government fails to make an award within two years of the declaration under Section 6, the land has still not vested in the Government and its title remains with the owner, the acquisition proceedings are still pending and, by virtue of the provisions of Section 11-A, lapse.** When Section 17(1) is applied by reason of urgency, the Government takes possession of the land prior to the making of the award under Section 11 and thereupon the owner is divested of the title to the land which is vested in the Government. Section 17(1) states so in unmistakable terms. Clearly, Section 11-A can have no application to cases of acquisitions under Section 17 because the lands have already vested in the Government and there is no provision in the said Act by which land statutorily vested in the Government can revert to the owner." **(emphasis supplied)**

(i) Pausing here momentarily, it may be remarked that, from the facts and circumstances before this Court, it is apparent that although the urgency clause was invoked, it was not acted upon by the State-Respondents.

14. In ***Raj Pal Singh*** vs. ***Commissioner of Income Tax, Haryana, Rothak***[5], the Supreme Court, at Paragraph 32.5, observed as follows;

> **"32.5.** ……. **in the matter of compulsory acquisition of land under the 1894 Act for public purpose, the property was to vest absolutely in the Government (thereby divesting the owner of all his rights therein) only after taking of possession in either of the methods i.e. after making of award, as provided in Section 16; or earlier than making of award, as provided in Section 17. In other words, the owner was divested of the property and same vested in the Government in absolute terms only if, and after, the possession was taken by either of the processes envisaged in Sections 16 and 17. However, so long as possession was not taken,**

[5] (2021) 13 SCC 489

> **the mere fact of issuance of notification under Section 4 of the 1894 Act or declaration under Section 6 thereof, did not divest the owner of his right in respect of the property in question."** **(emphasis supplied)**

(i) Handing over physical possession of the required property on 11-07-2015 is an admitted position.

(ii) In ***The Fruit & Vegetable Merchants Union*** vs. ***The Delhi Improvement Trust***[6], the Supreme Court considered the term "vest" and observed as follows;

> **"**(11) ….. As will presently appear, the term "vesting" has a variety of meaning which has to be gathered from the context in which it has been used. It may mean full ownership, or only possession for a particular purpose, or clothing the authority with power to deal with the property as the agent of another person or authority.
>
> …….
>
> (19) That the word "vest" is a word of variable import is shown by provisions of Indian statutes also. ……. **In the cases contemplated by Ss. 16 and 17 the property acquired becomes the property of Government without any conditions or limitations either as to title or possession. The legislature has made it clear that the vesting of the property is not for any limited purpose or limited duration. It would thus appear that the word "vest" has not got a fixed connotation, meaning in all cases that the property is owned by the person or the authority in whom it vests. It may vest in title, or it may vest in possession, or it may vest in a limited sense, as indicated in the context in which it may have been used in a particular piece of legislation.** ……**"**
> **(emphasis supplied)**

(iii) In ***S. Appala Narasamma*** vs. ***Commissioner of Income-Tax***[7], the Andhra Pradesh High Court, observed at Paragraph 6 as follows;

> **"6. Vesting of title to the land is a matter of law, not a matter of inference.** This is a case of transfer of property by operation of law and the relevant statute clearly provides the situations in which the land vests viz., Section 16, Section 17(1) and Section 17(2). **According to these provisions, the taking of possession per se does not bring about vesting; the taking of possession must be**

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[6] AIR 1957 SC 344

[7] (1986) SCC OnLine AP 317

> **consequent upon passing of an award (section 16) or an order contemplated by Section 17(1), or in a situation contemplated by Section 17(2). The Act does not provide for taking of possession before the passing of the award, except in** situations contemplated by Sections 17(1) and (2). …….. **Since possession taken before the award continues to be with the Government, we must say that the moment the award is passed, possession from that moment onwards should be related to the award. It is on that date that the land vests in the Government."** **(emphasis supplied)**

15. In ***Indore Development Authority*** (*supra*), at Paragraph 366.7 already extracted (*supra*), the Court with clarity has elucidated the mode of taking possession under the Act of 1894, as contemplated under Section 24(2) of the Act of 2013 is by drawing of inquest report/memorandum. Only once an award has been passed under Section 11 of the Act of 1894, on taking possession under Section 16 of the 1894 Act, the land vests in the State and there is no divesting provided under Section 24(2) of the Act of 2013, as once possession has been taken there is no lapse under Section 24(2) of the Act of 2013. The Memo, dated 11-07-2015, stands sentinel to the possession of the land handed over by the Petitioner and taken over by the officials of the Respondent No.2 and Respondent No.4. In Paragraph 366.4 ***Indore Development Authority*** (*ibid)* extracted (*supra*), it is provided that non-deposit of compensation (in court) "*does not result in the lapse of land acquisitions proceedings*". In light of the legal precedents referred to hereinabove, possession is handed over only on preparation of Award.

16. It is also settled law that, in case a person has been tendered the compensation as provided under Section 31(1) of the Act of 1894, it is not open to him to claim that the acquisition has lapsed under Section 24(2) of the Act of 2013 due to the non-

payment or non-deposit of compensation in Court. Section 24(2) of the Act of 2013 does not give rise to new cause of action to question the legality of concluded proceedings of land acquisition as culled out from the decision (*supra*). Section 24 of the Act of 2013 applies to a proceeding pending on the date of enforcement of the 2013 Act i.e. 01-01-2014. It does not revive stale and time-barred claims and does not reopen concluded proceedings nor allow landowners to question the legality of mode of taking possession to reopen proceedings or mode of deposit of compensation in the treasury instead of the court, to invalidate acquisition.

(i) The arguments of the Petitioner and the State-Respondents that the Award was not prepared is erroneous, misleading and made for the purpose of obtaining unlawful gain for the Petitioner when all parameters prescribed in the Act of 1894 had been followed by the concerned Authority. If the compensation computed on 31-05-2013 is not an Award then the State-Respondents have failed to explain the basis and law under which such compensation was prepared.

(ii) It is unfathomable as to how the State-Respondents can make a u-turn regarding their own Award or what inconceivable magnanimity would drive the Petitioner to hand over possession of his landed property to the Respondent No.4 without preparation of an Award. I also deem it appropriate to remark that the word "rectified" has been utilised in the Award of 12-08-2017. If the compensation of 31-05-2013 was not an Award, was there a necessity to "rectify" it on 12-08-2017? The words "Statement of Compensation" has been evidently employed for the reason that

Section 11 of the Act of 1894 itself mentions that the Collector shall compute the 'compensation' which in his opinion should be allowed for the land. Section 15 of the Act of 1894 also does not employ the word 'Award' but requires determination of compensation as also Sections 23 and 24 of the Act of 1894. In any event both the Awards nowhere invoke the provision under which the Award was prepared.

17. The anomalies in the market rates quoted by the State-Respondents are also revelatory of their inconsistent stand raising doubts about the authenticity of their contentions. Besides, Respondent No.3 claims to have informed Respondent No.4 on 11-06-2015 that all proceedings for land acquisition were on hold due to the Act of 2013. Records however reveal that by 05-05-2014, 80% of the compensation was already paid by Respondent No.4 and the house compensation made good on 30-05-2015. Despite information of Respondent No.3 referred to *supra*, dated 11-06-2015, the possession of the land was made over to the Respondent No.4 vide handing-taking document dated 11-07-2015 and this circumstance has gone unexplained by the State-Respondents. There is also no explanation offered as to why Petitioner would seek 20% remaining compensation, calculated as per the Act of 2013 only in 2017, when it was already deposited by Respondent No.4 with Respondent No.3 on 14-08-2015 as per the Act of 1894. It is only in case of non-deposit for five years or more that compensation under the Act of 2013 has to be paid to the Petitioner, calculated as on the date of Notification under Section 4 of the Act of 1894 (Paragraph 366.4 of ***Indore Development Authority*** (*supra*). Once possession is taken there is no lapse under

Section 24(2) of the Act of 2013 (Paragraph 366.7 of ***Indore Development Authority*** (*ibid*). Section 24 of the Act of 2013 applies to proceedings pending on the date of enforcement of 2013 Act i.e., 01-01-2014.

18. Before concluding the matter, it may appositely be noticed that, the Award dated 12-08-2017, reflects 100% solatium for land and 100% solatium for house compensation, while Section 30(1) of the Act of 2013 provides for imposition of solatium equivalent to one hundred percent of the compensation amount. Section 30(1) of the Act of 2013 and the 'Explanation' thereto is extracted below;

> **"30. Award of solatium.**—(1) The Collector having determined the total compensation to be paid, shall, to arrive at the final award, impose a "Solatium" amount equivalent to one hundred per cent of the compensation amount.
>
> *Explanation*.— For the removal of doubts it is hereby declared that solatium amount shall be in addition to the compensation payable to any person whose land has been acquired.**"**

(i) Section 31 of the Act of 2013 provides for Rehabilitation and Resettlement Award as per the Second Schedule, where there is no mention of solatium for the second time.

19. In ***R.B. Dealers Private Limited*** vs. ***Metro Railway, Kolkata***[8], the Supreme Court at Paragraph 4.1 held that;

> **"4.1.**..... Sub-section (3) of Section 30 further provides that in addition to the market value of the land provided under Section 26, the Collector shall, in every case, award the amount calculated at the rate of 12% p.a. on such market value for the period commencing on and from the date of the publication of the notification under sub-section (2) of Section 4, in respect of such land, till the date of the award of the Collector or the date of taking possession of the land, whichever is earlier. **Therefore, on a conjoint reading of the**

[8] (2019) 20 SCC 658

> **aforesaid provisions and the scheme of the Act, it is to be seen that before the final award is passed by the Collector, the Collector has to determine the market value of the land as provided under Section 26 of the Act. That, thereafter, after determination of the market value of the land as provided under Section 26 of the Act, the Collector has to determine the amount of compensation as per Section 27 of the Act, which includes the market value of the land as well as the value of all assets attached to the land. Therefore, the amount of compensation determined shall be including the market value of the land to be acquired (as per Section 26 of the 2013 Act) and the value of all assets attached to the land. The determination of the value of the things attached to the land or building shall be as per Section 29 of the 2013 Act. Over and above the amount of compensation so determined by the Collector as per Sections 26, 27 and 28 of the 2013 Act, at the time of the final award, the Collector has to impose a "solatium" amount equivalent to one hundred per cent of the compensation amount, as per Sections 29 and 30 of the 2013 Act. ……."** **(emphasis supplied)**

(i) Although, the above observation is not relevant for the present purposes, as the Award dated 31-05-2013 is being taken into consideration, however, it is a tangential observation made for the purpose of clarification regarding addition of solatium to the compensation under the Act of 2013.

20. In view of the foregoing discussions, the answer to the question formulated hereinabove is that Section 24(1)(b) and not Section 24(1)(a) of the Act of 2013 is applicable to the facts and circumstances of the matters under discussion.

21. It thus concludes that, WP(C) No.32 of 2018 deserves to be and is accordingly dismissed.

22. The prayers in WP(C) No.43 of 2022, are allowed. Consequently, (i) the letter bearing Memo No. 1748/LR&DMD/GOS/ACQ/317-318 dated 12-08-2017;

(ii) Letter bearing No.1748/LR&DMD/ACQ/GOS/418 dated 20-09-2017; and

(iii) Letter bearing No.1748/LR&DMD/2018/631 dated "NIL" 2018, all stand quashed.

23. Pending applications, in both the Writ Petitions stand disposed of accordingly.

(Meenakshi Madan Rai)
Judge
10-07-2023

Approved for reporting : **Yes**

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